



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO 334 OF 2019

(FORMARLLY HIGH COURT CIVIL SUIT NO 2364 OF 1999 (OS)

JOSEPHAT THUO GITHACHURI.....PLAINTIFF

- VERSUS -

LUCY NJOKI GAITHO AND DANIEL KIBUE GAITHO

(Administrators of the Estate of James Gaitho Kibue.....1ST DEFENDANT

KIMANI KIBUE KANYUA.....2ND DEFENDANT

AND

GLADYS NDUTA MBUGUA.....INTENDED INTERSTED PARTY

DIRECTIONS AND ORDER

1. This File was transferred from Nairobi High Court to Thika Environment and Land Court by Njuguna J in October 2019. It was listed before me by the Deputy Registrar on the administrative directions of Justice Obaga who was the Acting Presiding Judge at the time of issuing the administrative directions.

2. When the parties' advocates appeared before me virtually on 16/11/2020, Mr Maina, counsel for the intended interested party, informed the court that judgment in the suit was rendered by Rawal J in October 2007 and what was pending was the intended interested party's application dated 14/2/2019 seeking to set aside the said judgment. Counsel added that the application had been canvassed in the High Court before Njuguna J through written submissions and what was pending was a ruling on the application. He asked me to reserve a date for ruling. Mr Muhuni, counsel for the plaintiff, concurred. I proceeded to reserve a date for ruling.

3. While preparing to write the ruling, I noted that the transfer order made by the High Court required transfer of this File to **Thika Environment and Land Court** and not to **Nairobi Environment and Land Court**. For avoidance of doubt, the transfer order made by the High Court on 15/10/2019 reads thus:-

“This is an ELC Matter.

Order: The matter is hereby transferred to the ELC Court at Thika for hearing and determination. Mention on 4/12/2019 before the ELC at Thika

Njuguna J

15/10/2019

SIGNED”

4. The above order was made by Njuguna J in the presence of Mr Maina for the intended interested party and Mr Muhuni for the plaintiff. The Estate of James Gaitho Kibue was unrepresented. There is no subsequent order by the High Court or by the Thika Environment and Land Court redirecting this File to Nairobi Environment and Land Court. It is not clear under what circumstances the File was redirected or rerouted to the Nairobi Environment and Land Court and placed before the Acting Presiding Judge for administrative allocation to a judge of

the Nairobi Environment and Land Court. What is clear from the record is that the above two advocates were aware of the transfer order made by the High Court, transferring this File to Thika Environment and Land Court. They nonetheless decided to conceal that important information when they appeared before me. I discovered this when preparing to write the ruling.

5. A transfer order is not a minor procedural error to be ignored. As things stand, this File is a Thika Environment and Land Court File. It would be highly irregular for a judge of the Nairobi Environment and Land Court to deal with the File as if it is a Nairobi File or to casually disregard the transfer order made by the High Court.

6. Consequently, the erroneous proceedings taken in this File at Nairobi Environment and Land Court, including the order reserving a ruling date for the notice of motion dated 14/2/2019, are hereby expunged from the record and/or vacated and the Court Registry is directed to convey this File to Thika Environment and Land Court as ordered by the High Court on 15/10/2019.

7. Parties shall thereafter be at liberty to make any necessary application before the Thika Environment and Land Court, should they so desire.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 16TH DAY OF DECEMBER 2020.

B M EBOSO

JUDGE

In the Presence of: -

Maina holding brief for Mr. Ambeni for the Intended Interested Party.

Mr. Muhuni for the plaintiff

Court Clerk – June